Summaries of Direct Investigation Assessments

GOVERNMENT LAND TRANSPORT AGENCY (GLTA)

Case No. OMB/DI/106

Arrangement for Claims relating to Traffic Accidents involving Government Vehicles

Introduction

Unlike private vehicle owners, Government is exempted from insurance against third party risks under the Motor Vehicles Insurance (Third Party Risks) Ordinance. As it has the financial capability to cover its vehicles against such risks, Government is the insurer for its fleet.

2. In October 2002, there was widespread media coverage on the Court's rejection of a compensation claim by a victim of a traffic accident involving a Government vehicle. Government disputed liability on grounds that the use of the vehicle at the time of the accident was not authorised. Although Government offered an *ex gratia* payment to the victim, there was considerable public concern over the equity and adequacy of protection to victims in accidents involving Government vehicles.

Present Arrangements

3. Where liability is indisputable, the Department of Justice, acting on behalf of the Government, will try to settle the claim out-of-court.

4. For accidents which involve unauthorised use of its vehicles, Government has no legal liability. Victims have no recourse to compensation except for a discretionary *ex gratia* payment from Government.

Subsequent Developments

Insurer Concerned Principle

5. All motor insurers abide by the "Insurer Concerned Principle" whereby they will shoulder compensation claims from traffic accidents even when there has been a breach of insurance policy conditions such as unauthorised use of the vehicle at the time of an accident. Following a review in October 2002, Government has introduced a similar principle to provide victims with comparable protection.

Other Aspects

6. Government has re-affirmed the cost-effectiveness of the self-insurance. Guidelines on the processing of claims, the proper management and usage of Government vehicles have also been issued to departments.

Observations and Opinions

7. Government has responded promptly and positively to community concern over the incident and to our inquiry by reviewing the relevant policy and working arrangements. Both GLTA and its policy bureau are committed to handling future claims equitably.

Conclusion

8. Given these developments, The Ombudsman considers the conduct of a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance not warranted.

HIGHWAYS DEPARTMENT (Hy D)

Case No. OMB/DI/108

Monitoring the Operation of Road Works Vehicles

Background

Traffic accidents involving road works vehicles installed with multi sequence warning sign (MSWS or commonly known as “arrow lights”) were widely and frequently reported in recent years. MSWS vehicles are regarded as a safer means to alert road users of possible hazard and to prevent them from traffic accident, but the number of traffic accidents involving MSWS vehicles increased on the contrary. This raises public concern over the adequacy of safety measures for monitoring the operation of MSWS vehicles.

Mechanism Monitoring Road Works and Operation of MSWS Vehicles

2. Hy D is responsible for planning, design, construction and maintenance of the public road system. It contracts out road works and plays a supervisory role in monitoring the performance of the contractor.

3. Hy D regulates and monitors contractors through road works contracts. Contractors are required to comply with the laws of Hong Kong and the Code of Practice for the Lighting, Signing and Guarding of Road Works (the Code) to ensure traffic safety. The Code sets out a standard of good practice for the legal requirements to be met. Compliance with the Code is a condition or specification of a road work contract.

4. The Road Traffic Ordinance (Cap. 374) governs road traffic matters and requires a contractor to obtain an Excavation Permit or Expressway Works Permit from the Director of Highways before carrying out any road works. The operation of MSWS vehicles is further governed by the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A), Road Traffic (Traffic Control) Regulations (Cap. 374G) and Road Traffic (Expressway) Regulations (Cap. 374Q).

5. To ensure road safety, satisfactory performance of contractors and compliance with the laws and the Code, different ranks of Hy D staff check road works frequently. Contractors with substandard performance records will be penalised.

6. Meanwhile, the Police, Transport Department and Labour Department also play an indirect role in monitoring the safety of road works and operation of MSWS vehicles. In case of violation of the laws, the contractors will be prosecuted by the relevant authorities.

Observations and Opinions

7. The Police investigation confirms that speeding, drunk driving and failure to pay due care and attention are the major causes of MSWS vehicle related traffic accidents. None of the cases involved the contractors or the drivers of MSWS vehicles.

8. Hy D is considering new measures to enhance road works safety by –

(a) installing truck mounted attenuator at the back of MSWS vehicles to minimise casualty in case of collision;

(b) installing variable message sign to alert and prompt on-coming drivers to steer clear of such vehicles;

(c) offering additional training to the drivers of MSWS vehicles to enhance their knowledge and skills on safe manoeuvring of the vehicle;

(d) launching publicity to draw road users' attention to the appropriate action to be taken on spotting warning signals or traffic signs of road works; and

(e) reviewing the relevant laws and the Code periodically.

9. The Ombudsman considers that a close monitoring mechanism is already in existence, though its effectiveness depends much on the self-discipline of road users. Against this background, full direct investigation is not warranted.

TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY (TELA)

Case No. OMB/DI/105

Mechanism for Handling Complaints on Television Advertisements

In 2002, a television advertisement attracted over 700 complaints within one month. There was public concern over how TELA handled these complaints.

2. TELA was responsible for checking television advertisements for compliance with The Generic Code of Practice on Television Advertising Standard. In view of the number of channels and volume of advertisements, TELA could only act on complaints. If there was *prima facie* evidence of breach of regulations, the complaint would be referred to the Broadcasting Authority and its Complaints Committee for deliberation as to what, if any, sanction should be imposed.

3. While investigation was proceeding, the advertisement concerned would continue to be broadcast. As this would fuel public dissatisfaction, TELA introduced a new mechanism in June 2003 to expedite investigation into advertisements the continued broadcast of which would impact adversely on the community. The public, concerned to see the continuing broadcast of any advertisement they consider undesirable or unacceptable, would demand immediate stoppage of such broadcast.

4. We agreed with TELA that it had a duty to balance public sentiments against the interests of the licensee, the advertising agent and the advertiser. To uphold the principle of natural justice, proper investigation should be conducted and the parties concerned allowed to make representations. Until a ruling was made, there was no basis to stop the broadcast.

5. TELA had, quite properly, introduced measures to fast track the investigation process where warranted.

Summaries of Direct Investigation Assessments

TRANSPORT DEPARTMENT (TD)

Case No. OMB/DI/109

Monitoring of Compliance with Licensing Conditions for Operation of Non-franchised Buses (Residents' Service)

The operation of non-franchised buses (residents' service), commonly known as "estate buses", was regulated by the conditions of their licences.

2. After a new estate bus route has been approved, TD would conduct surveys to check for compliance with the licensing conditions. For existing services, in addition to complaint-driven inspections, TD would initiate surprise checks and annual comprehensive surveys.

3. Where non-compliance is detected, TD would take enforcement action. Depending on the severity of the case, such action would include warning, demand for rectification, inquiry under the Road Traffic Ordinance and prosecution.

4. To regulate the boarding and alighting of passengers, TD has erected bus stops and designated restricted zones in busy districts, i.e. Central, Wanchai and Tsimshatsui. Such regulatory measures would be extended to other districts, including the New Territories.

5. Measures taken by TD have been effective in monitoring the operation of licensed estate buses. In addition, enforcement against non-compliance has been stepped up since 2002.